

APPEAL NO. 030012
FILED FEBRUARY 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 19, 2002. The benefit review conference report listed the following as disputed issues:

1. Did Claimant sustain a compensable injury on _____?
2. Is Carrier relieved from liability under Texas Labor Code Ann. Section 409.002 because of Claimant's failure to timely notify his employer pursuant to Section 409.001?
3. Has Carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Texas Labor Code Ann. Section 409.021?
4. Did Claimant have disability resulting from an injury sustained on _____, and if so, for what period?

The parties agreed at the CCH to the following reformation of the issues:

1. Does the compensable injury of _____ extend to and include the injuries revealed by the October 9, 2002 MRI?
2. Did Claimant have disability resulting from an injury sustained on _____, and if so, for what period?

The hearing officer resolved the disputed issues by deciding that the compensable injury of _____, does not extend to or include the injuries revealed by the October 9, 2002, MRI and that the appellant (claimant) had disability beginning May 22 and continuing through May 28, 2002. The claimant appealed, arguing that the findings of the hearing officer are contrary to the evidence. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to the bottom of his left heel on _____. The evidence reflected that the claimant's employment was terminated on May 29, 2002. Extent of injury and disability are factual questions for the fact finder to resolve. Conflicting evidence was presented on these issues. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence.

Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The evidence supports the hearing officer's factual determinations. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The parties agreed that the issues at the CCH were limited to extent of injury and disability. We do not interpret the claimant's reference to Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002) in his request for review as an appeal of carrier waiver as it was not an issue at the CCH and was not decided.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FEDERATED MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSS LARSEN
860 AIRPORT FREEWAY WEST, SUITE 500
HURST, TEXAS 75054-3286.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Roy L. Warren
Appeals Judge